

Town of Amherst  
Zoning Board of Appeals - Special Permit

*DECISION*

**Applicant:** Donald and Karen Gallagher, 36 Harris Street, Amherst, MA

**Date Application filed with the Town Clerk:** August 8, 2005

**Nature of request:** Petitioner seeks a Special Permit, under Sections 9.22 of the Zoning Bylaw to convert a non-conforming use of a laboratory to three one-bedroom apartments.

**Location of property:** 750 North Pleasant Street, (Map 8C, Parcel 12, R-N Zone)

**Legal notice:** Published in the Daily Hampshire Gazette on September 7 and 14, 2005, and sent to abutters on September 6, 2005.

**Board members:** Zina Tillona, Tom Simpson and Ted Rising

**Submissions:**

The applicants submitted the following documents:

- Architectural Plans, undated, for the main house, prepared by Paul Beekman Johnson, Architect
- Architectural Plans, undated, for the former laboratory building, showing the proposed apartments
- A Site Plan showing the existing buildings and property lines and proposed parking, dated June 1, 2005.
- A Management Plan
- A copy of the Lease Agreement
- Residential Insurance certificates

Town staff submitted the following documents:

From the Planning Department:

- Memorandum Re: ZBA FY2006-00008, dated September 15, 2005, which discussed zoning, previous permits, dimensional requirements, parking, plantings, lighting, Management Plan, review by the Town Engineer and the Fire Department and Article 14 of the Zoning Bylaw, Phased Growth.
- Two aerial photographs, dated 1999 and 2004, showing the property at 750 North Pleasant Street.

From Jason Skeels, Town Engineer, an email dated September 21, 2005, discussing the issues of driveway access and water service.

From Bonnie Weeks, Building Commissioner:

- A letter from William Start, former Building Commissioner to Stacy Ciufu, Department of Microbiology, University of Massachusetts, dated September 1, 1999, regarding use of the laboratory building.

- A letter from William Start, to the applicant, Mr. Gallagher, dated October 19, 2000, regarding the permitting history of the property and the issue of owner occupancy.
- A letter from Bonita J. Weeks, to Karen Moode Gallagher, dated November 23, 2005, describing complaints received about the use of the property for multiple dwelling units without the required Special Permit and issuing a Cease and Desist Order against multiple dwelling units on the property.
- A letter from Jason and Alexa Adams to Bonita Weeks, received October 29, 2004, regarding use of the property at 750 North Pleasant Street for multiple dwelling units without a Special Permit.
- Copies of relevant state regulations regarding violations of the Building Code and appeals of decisions of the Building Commissioner to the Zoning Board of Appeals.
- A copy of an Affidavit, dated October 22, 1999, by Attorney Deborah T. Jankowski with regard to mixed use of the property for residential use and a commercial laboratory.
- Copies of relevant pages of the Zoning Bylaw.
- A handwritten note on University Conference Services stationery, dated October 5, 2000, regarding the requirement for owner-occupancy of the property, building and electrical permits and the date that the Howards purchased the property.
- Sketch floor plans of the original single-family house.
- Sketch floor plan of the garage and laboratory building.

Prior to the public hearing the following documents were submitted by abutters:

- A written complaint, dated September 13, 2004, from Allan and Barbara Carpenter and Jason and Alexandra Adams, regarding the use of the accessory building as an apartment building in an R-N zone, with attached aerial photograph, circa 1942.
- A memorandum to the Zoning Board of Appeals, dated September 20, 2005, from Allan and Barbara Carpenter, with accompanying photograph, regarding parking problems at the property.

During the public hearing the following documents were submitted:

- A written statement from Allan and Barbara Carpenter of 40 Farview Way, discussing the history of the building, zoning, parking and non-conformities.

**Site Visit:** April 12, 2005

At the site visit the Board was met by Donald Gallagher, the applicant, and Aaryn Blain, the site manager and a tenant of the accessory structure. They observed the following:

- The location of the property at the corner of two heavily-traveled streets, across from the Graduate Research Center at the University of Massachusetts.
- The wood-frame single-family house located at the front of the property.
- The other wood frame houses in the neighborhood.
- The accessory garage and former-laboratory located at the rear of the property.
- The interior of the former laboratory that has been converted into three dwelling units including kitchens, bathrooms, boiler room, bedrooms and means of egress for each unit.
- The garage, with space for two cars which is currently used for storage.
- The driveway with access onto Governors' Drive.
- The chain blocking access from the main portion of Farview Way, preventing vehicles from entering Governors Drive or the Gallagher property from that direction.
- The location of the rear and side property lines.
- The proximity of the homes at 19 and 40 Farview Way.

**Public Hearing:** September 22, 2005.

Donald Gallagher presented the petition. He made the following statements:

- He acquired the property from the Howard Estate and moved into the house six years ago.
- Howard Labs continued to operate its business in the accessory structure at the rear of the property after the Gallaghers moved into the house.
- Mr. Gallagher had an office in the accessory structure at that time.
- Howard Labs then moved to a new location in Hatfield.
- Mr. Gallagher (or his contractor) has done most of the construction work to convert the structure (formerly used as a laboratory for testing, engineering and storage) to low density one-bedroom and studio apartments, and would like a Special Permit to rent the apartments.
- The Gallaghers have since moved out of the main house and have rented it to three individuals.
- Mr. Gallagher moved his offices out of the accessory structure to a new location in Hadley.
- Much of the work to convert the building from laboratory to office space was done five years ago, with Building Permits.
- Mr. Gallagher now lives about one mile from the property and works about 2 miles away. He is available to manage the property.
- One tenant wishes to live and work on site and is willing to act as site manager.

Mr. Gallagher presented plans of the accessory structure and made the following comments:

- There will be no change in the footprint of the building.
- There are no structural changes proposed for the main house.
- The electrical system and plumbing in the accessory structure are new. The hardwood floors and the bathrooms are also new.
- Two interior walls are being added, but the façade is not changing.
- The interior improvements have been accomplished with steel studs and fireproof walls.
- The soundproofing is very good because one tenant uses musical instruments in his work and wishes to contain the sound within his space and to be undisturbed by noise from the outside.

The Board inquired about egress from the proposed dwelling units. Mr. Gallagher stated that two of the units have two means of egress. One of the units has three means of egress.

The Board inquired about the garage, its size and which tenants would be assigned garage spaces. Mr. Gallagher stated that the garage spaces will be assigned to tenants of the main house.

The Board inquired about security between the garage and the third apartment. Mr. Gallagher stated that the garage door into Apartment #3 will be closed up and insulated, blocking direct access to Apartment # 3 from the garage.

The Board presented two aerial photographs of the property, taken in 1999 and 2004. The Board noted that there appeared to be a change in the building between the time of the 1999 photograph and the 2004 photograph. It appeared that the accessory building had been expanded. Mr. Gallagher stated that the footprint of the accessory structure had not changed in 25 or 30 years.

The Board inquired about parking for the tenants. Mr. Gallagher stated that the tenants park in front of the lab and garage as well as on the discontinued extension of Farview Way. These parking spaces had historically been used by people dropping off water samples at the laboratory.

Ms. Tillona read the email from Jason Skeels, Town Engineer, dated September 21, 2005, with regard to parking, driveway access from Governors' Drive, emergency access, and water supply issues.

Mr. Rising stated that he was troubled by the parking issues and by the fact that parking for eight cars is required for the four dwelling units. (According to Section 7.000 of the Zoning Bylaw two spaces per dwelling unit are required.)

Mr. Gallagher stated that there are currently three people in the main house and that each one has a car. In addition there would be one car allowed for each apartment. This would mean that six parking spaces were needed to serve the four dwelling units on the site. He stated that two cars could be parked in the garage. He also noted that when Howard Labs was operating there were 3 or 4 employees and often 3 or 4 people stopping to drop off water samples, for a total of 6 to 8 cars on site at one time.

The Board noted that the working hours of the lab were probably 7:30 a.m. to 7:30 p.m. and that the employees and clients did not stay late at night. The conversion to a multi-family dwelling would alter the traffic and parking issues because tenants would be coming and going and cars would be parking all night.

The Board stated that there was not enough parking area available for the proposed use and that overnight parking in Farview Way was a problem in winter because of snow plowing. They also noted that there would be problems with cars moving in and out of the site because other cars would be parked behind them. Tenants would need to coordinate their comings and goings. The Board stated that Mr. Gallagher would need to follow up with the Town Engineer and the Select Board on the issue of parking, if the application were to be approved. The Board also noted that cars are not allowed to be parked on the street, in a public way, all night long, between November 1 and April 1.

Mr. Simpson noted that he had serious problems with the project as it was presented, notwithstanding the parking issue. The property is non-conforming as to lot area for a single-family home. Adding more units would increase the non-conformity. The lot is also non-conforming as to front yard setback from Farview Way. In addition the building coverage is non-conforming. He also stated that the project does not fit in with the nature of the existing single-family neighborhood.

Mr. Gallagher stated that if the proposal for dwelling units was not acceptable he would continue to use the building for offices and labs.

Allan and Barbara Carpenter of 40 Farview Way spoke in opposition to the proposal. Mr. Carpenter read the written statement that he had prepared. He had specific questions about sanitary sewer connections and parking.

Raphael Fissore of 50 Farview Way also spoke in opposition to the proposal, stating that there were problems with parking on the site, there had been cars for sale on the site and there would be problems with adding dwelling units to the property.

Mr. Simpson commented on the recommendation of the Town Engineer to move the chain blocking access to Farview Way. The Town Engineer had recommended that, if the building were converted to dwelling units, the chain should be moved so that residential traffic to the site would be routed via Farview Way.

Mr. Simpson noted that routing new traffic via Farview Way would cause problems for the residents there. He stated that, if the building remains in use as offices and keeps its access on Governors' Drive, then the impact to the neighborhood will be less than it would be if dwelling units were allowed.

Mr. Gallagher requested that he be allowed to keep one tenant for a period of six weeks. The Board responded that Mr. Gallagher did not have a permit to have a residential tenant in the accessory structure.

Bonnie Weeks, Building Commissioner, noted that the Zoning Bylaw required screening for parking areas with more than 5 parking spaces. She further noted that there was no room for screening in the proposed site plan.

Tom Simpson MOVED to close the evidentiary portion of the public hearing. Ted Rising SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

#### **Public Meeting - Discussion**

At the public meeting (the deliberative portion of the public hearing) the Board discussed the application. Mr. Simpson stated that he was opposed to the proposed conversion. Mr. Rising agreed that the proposal would not work in its present form but might work with a different design.

The Board noted that the proposal does not conform with the dimensional requirements of the Zoning Bylaw, the street (Farview Way) is too narrow to accommodate more traffic, the lot is too small and the parking proposal is not acceptable because the site plan shows overnight parking on the street, in the town right-of-way, and this will be a problem, especially in winter.

#### **Public Meeting - Decision**

Tom Simpson MOVED to deny the application. Ted Rising SECONDED the motion. The Board VOTED unanimously to DENY the application.

The application for a Special Permit was DENIED, as requested by Donald and Karen Gallagher, under Sections 9.22 of the Zoning Bylaw to convert a non-conforming use of a laboratory to three one-bedroom apartments at 750 North Pleasant Street, Map 8C, Parcels 12 and 16, R-N Zone).

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ZINA TILLONA

\_\_\_\_\_  
TOM SIMPSON

\_\_\_\_\_  
TED RISING

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2005 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.  
TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2005.

NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2005  
to the attached list of addresses by \_\_\_\_\_, for the Board.